

In The Matter Of:

IN RE: STATE STREET BANK AND TRUST CO

ELIZABETH SHEA
September 29, 2009

CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER
MERRILL CORPORATION

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SHEA, ELIZABETH - Vol. 1

No. 08-05442
HPOPS v. State Street
Memo in Resp to
M/Strike Weiner
Exhibit 4

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1 ELIZABETH SHEA
 01:18 2 A. Yes.
 01:18 3 Q. True?
 01:18 4 A. Yes.
 01:18 5 Q. Commercial mortgage-backed
 01:18 6 securities rated investment grade by Moody's and
 01:18 7 ERISA eligible?
 01:18 8 A. Right.
 01:18 9 Q. Right?
 01:18 10 A. Yeah.
 01:18 11 Q. Derivative securities, including,
 01:18 12 but not limited to, financial futures contracts,
 01:18 13 options and SWAPS?
 01:18 14 A. Yes.
 01:18 15 Q. Deposits and other debt instruments
 01:18 16 of domestic banks for both the U.S. and non- U.S.
 01:18 17 branches?
 01:18 18 A. Yep.
 01:18 19 Q. And the last one, bank commingled
 01:18 20 funds maintained by the trustee which have
 01:18 21 characteristics with the overall investment
 01:18 22 objectives?
 01:18 23 A. Right.
 01:18 24 Q. So when you or a member of your team
 01:18 25 would review the Limited Duration Bond Fund for

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1 ELIZABETH SHEA
 01:18 2 compliance with fund dec, what you would do is
 01:18 3 you would look at the portfolio holdings and make
 01:18 4 sure that the assets in the portfolio holdings
 01:18 5 comprise at least one of these particular assets,
 01:19 6 right?
 01:19 7 A. No.
 01:19 8 Q. All right. What would you do?
 01:19 9 A. We would review to ensure that the
 01:19 10 holdings complied with this. That doesn't --
 01:19 11 that does not mean at least one.
 01:19 12 Q. Okay. What do you mean "complied
 01:19 13 with this"?
 01:19 14 A. That --
 01:19 15 Q. What -- how do you comply with this
 01:19 16 permitted categories of assets investment?
 01:19 17 A. That what the fund holds falls
 01:19 18 within the permitted categories.
 01:19 19 Q. All right. And it falls within one
 01:19 20 of these permitted categories, at least one?
 01:19 21 A. That it falls within the permitted
 01:19 22 categories.
 01:19 23 Q. Okay.
 01:19 24 A. If the fund held exclusively debt of
 01:19 25 agencies of the U.S. government, that would be

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1 ELIZABETH SHEA
 01:19 2 fine.
 01:19 3 Q. That would be fine?
 01:19 4 A. Yes.
 01:19 5 Q. So you could 100 percent, according
 01:19 6 to the fund dec, in one -- even one of these --
 01:19 7 any one of these ten categories?
 01:19 8 A. That's correct.
 01:20 9 Q. Okay. Now, assume with me that it's
 01:20 10 a hundred percent invested in one subsector, or
 01:20 11 let's just say instead of a hundred percent,
 01:20 12 let's use the actual numbers.
 01:20 13 You know, do you not, that by the
 01:20 14 summer of 2007, July 31st, 2007 --
 01:20 15 A. Uh-huh.
 01:20 16 Q. -- that 95 percent of this fund was
 01:20 17 in subprime securities?
 01:20 18 A. No, I did not know that.
 01:20 19 Q. That would surprise you?
 01:20 20 A. Given where we are today, no, that
 01:20 21 would not surprise me.
 01:20 22 Q. Okay. Now, do you believe that a
 01:20 23 fund that is 95 percent exposed to subprime
 01:20 24 securities is diversified?
 01:20 25 MR. MAHER: Objection. Calls for a

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1 ELIZABETH SHEA
 01:20 2 legal conclusion.
 01:20 3 A. No.
 01:21 4 Q. Okay.
 01:21 5 A. However, it does not say that it
 01:21 6 needs to be diversified.
 01:21 7 Q. No. But my question was, do you
 01:21 8 believe that a fund that would be 95 percent
 01:21 9 exposed to subprime securities is diversified?
 01:21 10 A. No. Standing alone, no.
 01:21 11 Q. Okay. And that's because that's an
 01:21 12 overweight to subprime, right?
 01:21 13 A. Yes.
 01:21 14 Q. Now, did you know that the Limited
 01:21 15 Duration Bond Fund fact sheet described the two
 01:21 16 clients that the Limited Duration Bond Fund was a
 01:21 17 well diversified portfolio of securities?
 01:21 18 A. No.
 01:21 19 Q. Okay. Well, 95 percent in subprime
 01:21 20 would not be a well diversified portfolio of
 01:21 21 securities, would it?
 01:21 22 A. No, I would not disagree.
 01:21 23 Q. And compliance was not charged --
 01:22 24 I'm certainly not trying to blame you, ma'am, but
 01:22 25 I just want to make sure -- compliance was not

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1 ELIZABETH SHEA
 02:39 2 A. Uh-huh.
 02:39 3 Q. Okay?
 02:39 4 A. There's a great deal of information
 02:39 5 here that is data that you could commonly find on
 02:39 6 a fact sheet that would go to anyone.
 02:39 7 Q. Uh-huh. Okay. Is the risk -- is
 02:39 8 the risk capital utilization on a fact sheet?
 02:39 9 A. No, that is not.
 02:39 10 Q. Is the cVAR for the end of the month
 02:39 11 on a fact sheet?
 02:39 12 A. No.
 02:39 13 Q. Is the monthly risk tolerance on a
 02:39 14 fact sheet?
 02:39 15 A. No.
 02:39 16 Q. Is the amount of the risk budget
 02:39 17 assigned to each of the trades on a fact sheet?
 02:39 18 A. No, it is not.
 02:39 19 Q. Okay. Now, let me ask the question
 02:39 20 again.
 02:39 21 Do you believe that it is proper
 02:39 22 that the other portfolio managers, including
 02:39 23 those that had invested in the Limited Duration
 02:39 24 Bond Fund, had access to this information when
 02:39 25 the public did not?

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1 ELIZABETH SHEA
 02:39 2 MR. MAHER: Objection. Foundation.
 02:39 3 A. Probably not.
 02:40 4 Q. And that's because that would be
 02:40 5 disseminating information to some of the
 02:40 6 investors in the Limited Duration Bond Fund
 02:40 7 without disseminating the same information to all
 02:40 8 the investors on or about the same time, right?
 02:40 9 MR. MAHER: Objection. Foundation.
 02:40 10 A. It gave them the ability to access
 02:40 11 it. I wouldn't say it was disseminated, and I
 02:40 12 don't know that anyone knows whether it was
 02:40 13 accessed.
 02:40 14 Q. Okay. All right. But if they had
 02:40 15 access, they should not have access, is what
 02:40 16 you're saying?
 02:40 17 A. I -- my preference is that they
 02:40 18 would not have had access.
 02:40 19 Q. Okay. And that's because it would
 02:40 20 have made available to them, the other portfolio
 02:40 21 managers that invested in the Limited Duration
 02:40 22 Bond Fund, information that was not publicly
 02:40 23 available?
 02:41 24 MR. MAHER: Objection. Foundation.
 02:41 25 Q. Right?

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1 ELIZABETH SHEA
 02:41 2 A. Yes.
 02:41 3 Q. I mean, it's no secret that these
 02:41 4 Excel spreadsheets aren't posted on any website,
 02:41 5 right?
 02:41 6 A. That's correct. Public website,
 02:41 7 absolutely not.
 02:41 8 Q. Yes.
 02:41 9 ARMSTRONG EXHIBIT NO. 71 INTRODUCED
 02:41 10 Q. And we'll look at Armstrong
 02:41 11 Exhibit 71, which is for August.
 02:41 12 Have you seen that exhibit before?
 02:41 13 A. No.
 02:41 14 Q. Look at with me, by August, the
 02:41 15 market value of the CMY1 fund had fallen to
 02:41 16 \$31 million, from \$1.35 billion to \$31 million,
 02:41 17 do you see that, between June 30th of 2007 and
 02:42 18 August 31, 2007?
 02:42 19 A. Yes.
 02:42 20 Q. And do you see -- do you see the
 02:42 21 risk capital utilization there?
 02:42 22 The risk capital utilization has
 02:42 23 gone from 115 percent to 426 percent?
 02:42 24 A. I see that.
 02:42 25 Q. So a substantial increase in risk,

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1 ELIZABETH SHEA
 02:42 2 right?
 02:42 3 A. I don't technically know what that
 02:42 4 statistic means.
 02:42 5 Q. All right. So you don't know what
 02:42 6 the risk budget means?
 02:42 7 A. No.
 02:42 8 Q. As a member of compliance?
 02:42 9 A. No, that was not our area of
 02:42 10 responsibility.
 02:42 11 Q. Okay. You see the performance of
 02:42 12 the -- if we look at total performance on June --
 02:42 13 as of June 30th, it was negative 52.7 basis
 02:42 14 points?
 02:42 15 A. Uh-huh.
 02:42 16 Q. Look at the performance by June.
 02:42 17 A. Uh-huh.
 02:42 18 Q. 4,313 basis points.
 02:42 19 A. Uh-huh.
 02:42 20 Q. That's a disastrous performance,
 02:43 21 isn't it?
 02:43 22 A. Yes, it is.
 02:43 23 Q. Now, these Excel spreadsheets were
 02:43 24 updated on a daily basis.
 02:43 25 Are you aware of that?

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1 ELIZABETH SHEA
 02:55 2 Q. It had at least --
 02:55 3 A. I would expect it did.
 02:55 4 Q. Yes. And it could have liquidated
 02:55 5 any of them other -- any of those other
 02:55 6 investments in order to make redemptions, right?
 02:55 7 A. Yes.
 02:55 8 MR. MAHER: Objection. Foundation.
 02:55 9 Q. It didn't have to pick the Limited
 02:55 10 Duration Bond Fund in order to meet redemptions?
 02:55 11 MR. MAHER: Objection. Foundation.
 02:55 12 Misleading.
 02:55 13 A. The challenges without understanding
 02:55 14 exactly how the portfolio was run and what the
 02:56 15 portfolio manager's method of raising liquidity
 02:56 16 was, I don't -- I can't answer that question.
 02:56 17 Q. Well, what we can see -- what we can
 02:56 18 see here is we can see -- and so 8 -- let's see,
 02:56 19 when was the first in-kind liquidation made?
 02:56 20 The last cash distribution is made
 02:56 21 on 8/8/07. That's not true. There's some
 02:56 22 small -- very small ones made after that, and
 02:56 23 then we have one, two, three, four, five large
 02:56 24 in-kind distributions that are made on 8/10/07.
 02:56 25 Do you see that?

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1 ELIZABETH SHEA
 02:56 2 A. Yes.
 02:56 3 Q. Did you know that there were some
 02:56 4 large in-kind distributions made --
 02:56 5 A. No.
 02:56 6 Q. -- to other State Street funds?
 02:56 7 A. No.
 02:56 8 Q. And -- but do you see above that
 02:56 9 there are millions and millions of dollars of
 02:57 10 liquidations and sales by other State Street
 02:57 11 funds?
 02:57 12 A. I do.
 02:57 13 Q. And if other State Street funds and
 02:57 14 GAA clients and the Office of Fiduciary Advisor
 02:57 15 clients all got out before information on
 02:57 16 subprime prices was disseminated publicly to all
 02:57 17 clients, would that be proper?
 02:57 18 MR. MAHER: Objection. Foundation.
 02:57 19 A. If that was the case, I wouldn't see
 02:57 20 that that was -- I would not think that
 02:57 21 appropriate. I don't know that that was the
 02:57 22 case.
 02:57 23 Q. If that was the case, that would be
 02:57 24 a serious breach of fiduciary duty; would it not?
 02:57 25 MR. MAHER: Objection. Calls for a

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1 ELIZABETH SHEA
 02:57 2 legal conclusion.
 02:57 3 A. I don't know that I'm qualified to
 02:58 4 state that, but --
 02:58 5 Q. Well, we've already gone over that
 02:58 6 you're qualified because you're -- you're in
 02:58 7 charge of compliance, portfolio compliance at
 02:58 8 State Street, right, and we've talked about your
 02:58 9 understanding of fiduciary responsibility
 02:58 10 throughout this deposition, and your -- and you
 02:58 11 have acknowledged to me repeatedly that all
 02:58 12 clients ought to be treated fairly.
 02:58 13 Would it be treating all clients
 02:58 14 fairly if only State Street-related funds, GAA
 02:58 15 clients and Office of Fiduciary Advisor clients
 02:58 16 got out before other outside clients got out?
 02:58 17 MR. MAHER: Objection. Foundation.
 02:58 18 A. If --
 02:58 19 Q. Based on insider information?
 02:58 20 MR. MAHER: Objection. Foundation.
 02:58 21 Calls for a legal conclusion.
 02:58 22 A. If it was based on inside
 02:58 23 information, yes.
 02:58 24 Q. That would be a breach of fiduciary
 02:59 25 duty, wouldn't it?

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1 ELIZABETH SHEA
 02:59 2 A. In my opinion, yes.
 02:59 3 MR. BURFORD: Give me just a minute.
 02:59 4 I need to -- I need to turn this over to
 02:59 5 him, and I just need to make sure that I've
 02:59 6 got it and I don't have any documents I
 02:59 7 have to ask about.
 02:59 8 MR. MAHER: Do you want to take like
 02:59 9 a five-minute break then?
 02:59 10 MR. BURFORD: Will you give me five?
 02:59 11 MR. MAHER: Sure.
 02:59 12 THE VIDEOGRAPHER: Going off the
 02:59 13 record 2:58 p.m.
 03:06 14 (A recess was taken.)
 03:06 15 SHEA EXHIBIT NOS. 12, 13, 14 and 15 MARKED
 03:07 16 THE VIDEOGRAPHER: Here marks the
 03:07 17 beginning of Tape No. 4 in the videotaped
 03:07 18 deposition of Elizabeth Shea. Back on the
 03:07 19 record 3:07 p.m.
 03:07 20 BY MR. BURFORD:
 03:07 21 Q. Let me show what is Shea Exhibit
 03:07 22 No. 13.
 03:07 23 A. Thank you.
 03:07 24 Q. This is from Jack Moore to the
 03:07 25 Office of Fiduciary Advisors, dated July 26th,

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1 ELIZABETH SHEA
 05:12 2 Consistency of what?
 05:12 3 Q. He asked you a series of questions
 05:12 4 that if that the governing document was
 05:12 5 inconsistent with ERISA, then ERISA should --
 05:12 6 A. Prevail.
 05:12 7 Q. -- prevail?
 05:12 8 A. Yes.
 05:12 9 Q. And there were a number of those
 05:12 10 questions --
 05:12 11 A. Yes.
 05:12 12 Q. -- and variations of that.
 05:12 13 Do you recall that?
 05:12 14 A. Yes.
 05:12 15 Q. I just wanted to clarify that am I
 05:12 16 correct that during the years that you served as
 05:12 17 a compliance officer overseeing fixed income, the
 05:12 18 fixed income funds, it was not compliance's
 05:12 19 function or job to identify inconsistency between
 05:12 20 the governing documents and ERISA?
 05:13 21 A. That is correct.
 05:13 22 Q. And so, for example, it would not be
 05:13 23 your job or compliance's job to identify
 05:13 24 inconsistencies between any of the governing
 05:13 25 documents and, for example, the prudent investor

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1 ELIZABETH SHEA
 05:13 2 standard under ERISA?
 05:13 3 A. That is correct. Compliance does
 05:13 4 not have a role in creating legal documents for
 05:13 5 either our clients or the business.
 05:13 6 Q. Mr. Burford also asked you about the
 05:13 7 LDBF being 95 percent invested in subprime.
 05:13 8 A. Yes.
 05:13 9 Q. If that was diversified.
 05:13 10 A. Yes.
 05:13 11 Q. I recall that you testified that
 05:13 12 would not be diversified --
 05:13 13 A. Right.
 05:13 14 Q. -- correct?
 05:13 15 A. Correct.
 05:13 16 Q. If the LDBF had 95 percent of its
 05:13 17 investments all in the subprime sector, but some
 05:13 18 were Triple A and some were Double A and some
 05:13 19 were Single A, would that change your answer,
 05:14 20 that it wasn't diversified, but they're all still
 05:14 21 in the real estate subprime sector?
 05:14 22 A. It slightly modifies my response in
 05:14 23 that the fund is not diversified from a sector
 05:14 24 perspective, so to speak. It may be somewhat
 05:14 25 more diversified from a credit standpoint;

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1 ELIZABETH SHEA
 05:14 2 however, because all of the securities are --
 05:14 3 predominant number of the securities are in the
 05:14 4 same sector, you're still at a high risk of
 05:14 5 non-diversification.
 05:14 6 Q. And in your role overseeing the
 05:14 7 mutual funds, there was an accepted definition of
 05:14 8 sector risk, wasn't there?
 05:14 9 A. I don't --
 05:15 10 Q. And I'm speaking about the SAIs.
 05:15 11 A. There is -- mutual funds have a
 05:15 12 requirement to concentrate no more than 25
 05:15 13 percent in any one industry. Sector and industry
 05:15 14 are not defined in the same fashion, but
 05:15 15 effectively, that requirement within mutual
 05:15 16 funds, you know, by definition would help them to
 05:15 17 avoid the situation that LDBF found itself in.
 05:15 18 Q. Because it would be more -- there
 05:15 19 would be more sectors within the portfolio,
 05:15 20 rather than just a single subprime sector; is
 05:15 21 that right?
 05:15 22 A. That's correct.
 05:15 23 MR. ENG: Thank you very much. I
 05:15 24 have no further questions.
 05:15 25 THE WITNESS: All right. Thank you.

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1 ELIZABETH SHEA
 05:15 2 MR. MAHER: We have don't have any
 05:15 3 questions either for the witness.
 05:15 4 THE VIDEOGRAPHER: This marks the
 05:15 5 end of Tape No. 5 the videotaped deposition
 05:16 6 of Elizabeth Shea. Going off the record
 05:16 7 5:15 p.m.
 05:16 8 (The deposition was adjourned at 5:15 p.m.)
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1 ELIZABETH SHEA
2 COMMONWEALTH OF MASSACHUSETTS)
3 SUFFOLK, SS)
4

5 I, Deborah L. Roth, and Notary Public in and for
6 the Commonwealth of Massachusetts, do hereby
7 certify that on September 29, 2009, Elizabeth
8 Shea, personally appeared before me, and proved
9 to through satisfactory evidence of
10 identification to be the person who was by me
11 duly sworn to the truth concerning any knowledge
12 in this cause; that that person was thereupon
13 examined under oath, and the examination reduced
14 to typewriting; and that the deposition is a true
15 record of the testimony given by the witness.

16 I further certify that I am neither related to
17 nor employed by any attorney or counsel employed
18 by the parties hereto or financially interested
19 in the action.

20 In witness whereof, I have hereunto set my hand
21 this 2nd day of October, 2009
22

23 DEBORAH ROTH, Notary Public
24 My commission expires: 1/23/2015
25